

COMPLIANCE BOARD OPINION NO. 99-8
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July 14, 1999

Mary R. Craig, Esquire

The Open Meetings Compliance Board has considered your complaint, filed on behalf of the Herald Mail Company, that the Mayor and City Council of Hagerstown violated the Open Meetings Act on May 18, 1999, by conducting a particular discussion in closed session. For the reasons stated below, the Compliance Board finds that the Act was violated.

I

Complaint and Response

The facts are undisputed. The Council met in closed session on May 18, 1999, to discuss various topics. The portion of the closed meeting that is the subject of the complaint involves the third agenda item. This portion of the meeting was closed, according to the agenda, to “[c]onsider matters pertaining to proposals for new business in the City,” with specific regard to Baldwin House.

Your complaint elaborated on the meaning of that reference. Baldwin House is property owned by the City of Hagerstown. Apparently, the City has sought to encourage renovation and development of the property, located in the center of Hagerstown. To the extent that the discussion in closed session on May 18 involved a proposal from a private developer to renovate the property, your complaint did not challenge the legality of the closed session. However:

The newspaper believes that the City Council violated the law by discussing the potential gift or transfer of the Baldwin House property to the University of Maryland for use as a satellite location for the University System. Although there was no discussion of the transfer at the open meeting of May 18, 1999, the Mayor wrote to the Governor that day and indicated that the City was prepared to offer the property for a classroom location.

In a timely response on behalf of the Council, Mark K. Boyer, Esquire, confirmed the complainant's recitation of the facts:

During the closed session, the Mayor and Council discussed the Baldwin House property, which is publically owned and has been the subject of various potential renovation projects in the past. The discussion regarding the Baldwin House dealt with two issues. The first, which the complainant concedes was proper, discussed the status of a local private developer's proposal to renovate and rehabilitate the structure. The second part of the discussion dealt with whether the Baldwin House should be included in a package to attempt to lure the University of Maryland satellite campus to the city.

The Council's stated basis for closing this discussion was §10-508(a)(4) of the State Government Article: "[A] public body may meet in closed session [to] consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State." The complaint contended that this provision was inapplicable, because "the University of Maryland is a public entity, and does not fit within the definition of a 'business or industrial organization' specified in §10-508(a)(4)." The Council, by contrast, contended that the phrase "business or industrial organization" is broad enough to extend to the University of Maryland:

It cannot be argued that the University of Maryland is not a business. While it may have public ties, receive public funding, and be subject to public control, it is very much a business in that it is a commercial activity conducted for financial gain. This one crucial element is common to all definitions of the term business. The University of Maryland competes with other similar businesses for its customers and for private dollars in the form of tuition.... The exception which allows for the closed session discussion of the relocation of a business is not limited in any fashion, and applies equally to public as well as private businesses. If the Legislature intended for this exception to apply to only private businesses, it would have so stated.

II

Analysis

This interpretative issue about the scope of the Act's "business relocation" exception has not been addressed before. No court has considered it, and the only prior Compliance Board opinion dealt with the relocation of a private business. Compliance Board Opinion No. 93-3 (February 24, 1993), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 28.

The term "business or industrial organization" is not defined in the Act. Nor have we located any legislative history that explains the General Assembly's objective in using the term.¹ In the abstract, as Mr. Boyer pointed out, the term "business" can be a broad one and might be thought to encompass any entity, private or public, that offers goods or services in the marketplace, which the University of Maryland certainly does. One dictionary definition, for example, refers to "a person, partnership, or corporation engaged in commerce ..." and to "a building or site where commercial work is carried on" *Random House Dictionary of the English Language* 283 (2d ed. 1987).

Nevertheless, construing the term to its broadest limit seems forced in this context. After all, the term "industrial organization" surely refers to large-scale private sector enterprises that produce manufactured goods. The parallel term "business" most naturally reads as a reference to other private sector producers of goods or services. Moreover, the General Assembly is accustomed to viewing the term "business" as a shorthand reference to the private sector, for that is what the term usually encompasses in other statutory contexts – for example, the debarment law (see §16-101(b) of the State Finance and Procurement Article) and the law requiring a business impact statement before a regulation is adopted (see §10-124(a) of the State Government Article). As a California appellate court summarized: "Although the term 'business,' when used in legislation, is not necessarily limited to activities engaged in for profit ..., it is nevertheless confined to activities engaged in by private entities, unless a contrary intent is apparent from the statutory language." *Sacramento Municipal Utility District v. County of Solano*, 63 Cal. Rptr. 2d 286, 289 (Cal. App. 1997).

¹ The term appears in the original Open Meetings Act, Chapter 863 of the Laws of Maryland 1977. Substantially identical wording appeared in open meetings legislation the previous year, Senate Bill 289 of 1976, which was vetoed by the Governor. The legislative record for both bills contains no elaboration of the term.

In any event, we cannot construe the term “business” so broadly as to expand the realm of closed meetings, because the Act instructs us otherwise: “The exceptions in subsection (a) shall be strictly construed in favor of open meetings of public bodies.” §10-508(c). Strict construction of the term “business or industrial organization” means that we limit its scope to those private enterprises that are commonly thought of as businesses.²

III

Conclusion

Accordingly, we hold that the exception in §10-508(a)(4) did not apply to the Council’s consideration of a proposal for the University of Maryland to locate a facility in city-owned property. This portion of the Council’s discussion should not have been closed on this basis and, therefore, the closed meeting violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

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² We have no occasion here to consider whether the exception applies to private, non-profit organizations.